

TEXAS WATER COMMISSION

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B. J. Wynne, III, Chairman
John E. Birdwell, Commissioner
Cliff Johnson, Commissioner



John J. Vay, General Counsel
Michael E. Field, Chief Hearings Examiner
Brenda W. Foster, Chief Clerk

Allen Beinke, Executive Director
December 7, 1990

Mr. Rick Gilpin, Chairman
Opinion Committee
Office of the Attorney General
Supreme Court Building
P. O. Box 12547
Austin, Texas 78711

RE: RQ-2036

Dear Mr. Gilpin:

The Texas Water Commission is in receipt of your letter dated November 5, 1990 regarding our request that the Attorney General interpret §27.015 of the Texas Water Code, TEX. WATER CODE ANN. Chapter 27 (Vernon 1990). You state in the above-referenced letter that because the issue of whether a letter from the Texas Railroad Commission addressing potential oil and gas impacts for Underground Injection Control permit applications is advisory or jurisdictional is an issue currently pending in a contested case proceeding before the Texas Water Commission, you believe it is inappropriate for you to render an interpretation on this statutory provision.

The issue of whether or not such a letter is required before the Texas Water Commission can take jurisdiction over a proceeding on an underground injection well application is not a disputed issue in any of the contested case proceedings currently pending before the Commission. The Texas Railroad Commission has provided a letter stating that there are no apparent oil and gas impacts for each of the underground injection well applications currently pending before the Commission. This issue arose some time ago over an application which is currently pending before the Commission; however, the Texas Railroad Commission supplied the letter before jurisdiction was taken by the Hearing Examiner in that matter.

Because this issue is one which arises in every underground injection well proceeding by virtue of the statutory provision we have requested you to interpret, it is important that the nature of this requirement be clarified for all affected applicants as well as the state regulatory agencies that are charged with implementing this provision. This issue will necessarily arise in any underground injection well proceeding; therefore, there will be applications that are potentially affected by your interpretation of this statute for the foreseeable future. However, because the presence or absence of such a letter is not currently in dispute in

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any of the pending applications, we do not believe there is any reason to delay in responding to our request for an interpretation of §27.015 of the Texas Water Code.

Therefore, we are resubmitting our request for an official Attorney General opinion on whether §27.015 of the Texas Water Code requires that a letter from the Texas Railroad Commission stating that the drilling or using of an underground injection well for the disposal of municipal or industrial waste will not endanger or injure any oil and gas formation is a jurisdictional prerequisite which must be satisfied before the Texas Water Commission can proceed to hearing on an underground injection well permit application.

If you have any questions, please contact either Mr. Jim Haley, Director, or Ms. Michelle A. McFaddin, Senior Attorney, with the Commission's Legal Division at (512) 463-8069.

Sincerely,

A handwritten signature in black ink, appearing to read "Buck Wynne", with a horizontal line extending from the end of the signature.

B.J. Wynne III
Chairman
Texas Water Commission

BJW/mam/mam